

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6873 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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GADHAVI GANESHBHAI BHURDANJI

Versus

DOSHI RAMANIKLAL CHIMANLAL

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Appearance:

MR MC BAROT for Petitioner

MR MH RATHOD for Respondent No. 1

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CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 22/09/97

ORAL JUDGEMENT

The petitioner whose election to the office of member of District Panchayat, Banaskantha has been set aside by the Election Tribunal [Civil Judge (J.D)], Vav by its impugned order dated 8th September, 1997 seeks to challenge the validity of Rule 15 (7) of the Gujarat Panchayats Elections Rules, 1994, on the ground that it

disqualifies the voter from contesting the election if the proposer is disqualified. It is also the petitioner's case that his proposer was not in fact disqualified because he was an octroi contractor of the Vav Gram Panchayat and not the District Panchayat and therefore, he had no interest in the District Panchayat.

The learned Counsel appearing for the petitioner strongly contended that Section 30 of the Gujarat Panchayats Act, 1993 which lays down disqualifications of persons from being members of the Panchayat does not lay down that such person would be disqualified if his proposer is disqualified. It is therefore, contended that Rule 15(7) is beyond the scope of Section 30 and therefore, ultra-vires and should be set at naught. It is further contended that Clause 23 of the terms and conditions of the octroi contract, which was given to the proposer of the petitioner, contemplated payment of the taxes of the District Panchayat and Taluka Panchayat, which would be due on the octroi actually collected by the said contractor. The proposer had, by separate agreement, undertaken to pay such amount to the District Panchayat as per the certified xerox copy of the agreement produced by the learned Counsel for the petitioner. The learned Counsel therefore submitted that there was no contract between the proposer and the District Panchayat, which would have disqualified the proposer from becoming a member of the District Panchayat.

Rule 15 of the said Election Rules provides for scrutiny of nomination papers. Under sub-rule 7 of Rule 15, a voter named in the certified copy of an entry made in the list of voters of the electoral division can rely upon such entry as conclusive evidence of his right to vote, unless it is proved that the candidate or, as the case may be, the proposer is disqualified, within the meaning of sub-section (2) of Section 28 of the Act, to contest the election. Under sub-rule 2(b) of Rule 15, nomination paper can be rejected on the ground that the proposer is disqualified from subscribing a nomination paper. It will be clear from the provisions of Rule 15 that it does not lay down that the candidate who has filled in nomination, is disqualified if his proposer is disqualified. It only lays down that the nomination of such a candidate whose proposer is disqualified, is required to be rejected. Rejection of nomination form which does not comply with the requirements of the rule is altogether different from disqualification of the candidate, who has filled-in that form. The fact that nomination form is rejected on any of the grounds

including the ground that the proposer is disqualified, is not the same thing as saying that the candidate is disqualified under Section 28(2) read with Section 30. Rule 15(7) therefore is, in no way, in conflict with the provisions of Section 28(2) or Section 30, since it deals with altogether a different issue of validity of nomination papers and does not pronounce upon qualification of the candidate, who has filled-in such nomination paper. There is, therefore, no substance in the challenge against the validity of the provision of Rule 15(7) of the said Rules.

The petitioner's election was challenged on several grounds by the respondent No.1 in Election Petition No. 1/95 under Section 31 of the said Act. The Election Tribunal on the basis of the evidence adduced before it, has come to a finding that the proposer of the petitioner was having interest in the District Panchayat being the octroi contractor of the Vav Gram Panchayat, with which he had entered into a contract, inter-alia, for payment of the taxes of the District Panchayat, as would become due on the octroi collected by him. It was found while answering issue No.2 that Vav was within the electoral limits of the District Panchayat and the petitioner's proposer Kanaiyalal Shankarlal Trivedi was the same person Sureshkumar Shankarlal Trivedi, who had entered into the octroi contract with the Vav Panchayat for the period from 1.4.95 upto 31.3.96. It is found that under the said contract Sureshkumar Shankarlal Trivedi i.e. the proposer of the petitioner, had agreed to pay taxes to the tune of 10% due to be paid to the District Panchayat. On this basis it is found that the octroi contractor was having financial interest in the District Panchayat. The Tribunal found that the petitioner had, in his deposition Exhibit 52, tried to with-hold the correct facts and posed ignorance regarding material facts, though from the deposition of Sarpanch it was clearly established that Kanaiyalal Shankarlal Trivedi and Sureshkumar Shankarlal Trivedi were the same person. It is found that the proposer was making payment of the tax payable to the District Panchayat pursuant to Clause 23 of the terms and conditions of the contract. The Sarpanch had produced statement Ex.42 regarding such payment of tax on octroi by the petitioner to the District Panchayat. The Sarpanch has in terms deposed that he was studying with Sureshkumar Shankarlal Trivedi, who was also known as Kanaiyalal Shankarlal Trivedi. Thus, the Tribunal has, on the basis of the material on record, found that the proposer had sufficient interest in the Panchayat and was disqualified. It was rightly held by the Tribunal that eventhough the contract was

entered into by the proposer with the Vav Gram Panchayat, the very purpose underlying the provisions of law having bearing on disqualification would be defeated if the proposer was not held to have interest in the District Panchayat, to whom he was liable to pay the amounts agreed to him under the contract entered into with the Gram Panchayat, which was under that District Panchayat. The facts on record clearly disclose that the proposer had undertaken the liability under the contract to pay tax to the District Panchayat, which was payable by the village Panchayat. This amounts to sufficient interest of the proposer in the District Panchayat within the meaning of Section 30(1)(g), which also takes within its sweep indirect interest. The proposer's interest in the District Panchayat springs from the contract entered into by him with the Vav Gram Panchayat. The said District Panchayat is an appellate authority of the said Vav Gram Panchayat under Section 242 of the said Act. It would be therefore, be incongruous to consider the proposer who is disqualified from becoming a member of the Vav Gram Panchayat, to be qualified for becoming the member of its appellate forum - namely, the said District Panchayat. Since the proposer had sufficient interest to be disqualified from becoming a member of the District Panchayat, the petitioner's nomination was rightly held to be invalid under Rule 15(2)(b), read with Rule 15(7) of the said Rules, by the Tribunal.

The Tribunal has acted in lawful exercise of its jurisdiction and on the basis of the material on record and there is absolutely no warrant for interfering with the impugned decision in the writ jurisdiction of this Court. The petition is therefore, summarily rejected.

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